

Reply Brief
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Dated: September 24, 2010 Signature: Donna Dobson
(Donna Dobson)

Docket No.: 64032/P006US/10303189
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Zhibin Lei et al.

Application No.: 10/677,418

Confirmation No.: 8456

Filed: October 2, 2003

Art Unit: 2452

For: SYSTEM AND METHOD FOR PROVIDING
MULTIMEDIA WIRELESS MESSAGES
ACROSS A BROAD RANGE AND
DIVERSITY OF NETWORKS AND USER
TERMINAL DISPLAY EQUIPMENT

Examiner: T. Hussain

REPLY BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Commissioner:

As required under § 41.41(a)(1), this Reply Brief is filed within two months of the Examiner's Answer dated July 26, 2010, and is in furtherance of the Appeal Brief filed on May 14, 2010.

No fee is required for this REPLY BRIEF.

This brief contains items under the following headings pursuant to M.P.E.P. § 1208:

- I. Status of Claims
- II. Ground of Rejection to be Reviewed on Appeal
- III. Argument
- IV. Conclusion

I. STATUS OF CLAIMS

The status of claims remains as identified in the Appeal Brief submitted May 14, 2010 which is as follows:

A. Total Number of Claims in Application

There are 19 claims pending in application.

B. Current Status of Claims

1. Claims canceled: None
2. Claims withdrawn from consideration but not canceled: 1 – 31 and 51 – 55
3. Claims pending: 32 – 50
4. Claims allowed: None
5. Claims rejected: 32 – 50

C. Claims On Appeal

The claims on appeal are claims 32 – 50.

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to be reviewed remain as identified in the Appeal Brief submitted May 14, 2010, which are as follows:

- A. First Ground of Rejection – Claims 32 and 43 – 44 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2003/0193951 to Fenton et al. (hereinafter, “Fenton”) in view of U.S. Patent Publication No. 2002/0103935 to Fishman et al. (hereinafter, “Fishman”).
- B. Second Ground of Rejection – Claims 33 – 42 and 45 – 50 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fenton and Fishman as applied to parent claims 10 and 32 above, in view of U.S. Patent Publication No. 2004/0249768 to Kontio et al. (hereinafter, “Kontio”).

III. ARGUMENT

For the sake of brevity, the arguments in this brief do not repeat the arguments presented in the Appeal Brief. Instead, this Reply Brief addresses specific assertions and issues raised by the Examiner’s Answer and reiterates that the Appellee has not established a *prima facie* case of obviousness of the rejected claims.

A. First Ground of Rejection – 35 U.S.C. § 103(a) Rejection over Fenton in view of Fishman

Claims 32 and 43 – 44 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fenton in view of Fishman. The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. M.P.E.P. § 2142; *In re Peehs*, 612 F.2d 1287, 204 USPQ 835, 837 (CCPA 1980). In an obviousness rejection, “[u]nder § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved.” *Graham v. John Deere Co.*, 383 U.S. 1, 15 – 17 (1966). With regard to the claims rejected under 35 U.S.C. § 103(a) in the current application, the Office Action and Examiner’s Answer do not show that the rejected claims are obvious under the framework set out in *Graham*. Specifically, the Examiner has not shown that the applied art teaches all the limitations of the rejected claims.

1. Independent claim 32

Claim 32 requires, “storing content within a database . . . after said storing . . . receiving, at said server, from a first user device of a plurality of user devices an abbreviated message including identification of certain content of said stored content for sending” The Appellee asserts that the disclosure in Fenton, paragraphs [0037] and [0038] teaches these limitations of claim 32. Examiner’s Answer, pages 3 – 4. In response to Appellant’s assertion in the Appeal Brief that the Appellee has not shown that these disclosures of Fenton teach the limitations at issue, the Appellee points to Fenton, paragraphs [0026] and [0046] to refute the Appellant’s assertions. Examiner’s Answer, page 11.

The Appellee asserts that paragraph [0026] discloses the architecture of a messaging system because:

MMSE provides all the necessary functionality including e.g. delivery, storage, notification etc. Therefore, all messages between users 102 – 110 are delivered via MMSE 114, which stores the message first and using MMS relay component to deliver the message to other users via using 2G, 3G, mobile network or internet / IP network.

Examiner's Answer, page 11. The Appellee then asserts that abstract messages discussed in paragraph [0046] are similar to the abbreviated message recited in claim 32. Examiner's Answer, page 11.

The Appellee's reliance on paragraphs [0026] and [0046] of Fenton, in essence, is an assertion that because MMSE 114 stores and delivers messages, then Fenton teaches "storing content within a database . . . after said storing . . . receiving, at said server, from a first user device of a plurality of user devices an abbreviated message including identification of certain content of said stored content for sending . . ." The Appellant respectfully disagrees with the Appellee's assertions. Paragraphs [0026] and [0046] of Fenton do not disclose that, after MMSE 114 (the asserted database) stores content, MMSE 114 receives an abbreviated message including identification of certain of the stored content for sending. In other words, the Appellee has attempted to address only the storing and delivery of content without any reference to the context in which storage and delivery occurs, such as when storage and delivery occurs. In sum, the Appellee has failed to show that Fenton teaches the limitations, taken together, requiring "storing content within a database . . . after said storing . . . receiving, at said server, from a first user device of a plurality of user devices an abbreviated message including identification of certain content of said stored content for sending . . ."

Fishman does not cure the deficiencies of Fenton. Fishman discloses content store 230 receives email data object to A, B and C but does not disclose that after content store 230 receives e-mail data object to A, B and C, receiving identification of certain content, at content store 230, for sending. As such, Fishman also does not teach the limitation of claim 32 requiring that after said storing and identifying, receiving identification of certain content for sending.

In sum, the Appellee has not shown that Fenton in view of Fishman teaches all the limitations of claim 32. Accordingly, the Appellant respectfully requests that the Board reverse the rejection, under 35 U.S.C. § 103(a), of claim 32.

2. Independent claim 43

Claim 43 requires a gateway server for use in a network where users direct a transfer of messages to other users. The gateway server comprises at least one database for storing content and a distribution control apparatus for receiving a unique identification of certain content of the stored content and for sending at least a portion of said uniquely identified content to a recipient identified by the user. Claim 43 further requires that the receiving of unique identification of certain content at the control apparatus occurs after the content has been stored and uniquely identified. The Appellee relies on Fishman Fig. 2 and Abstract for teaching receiving unique identification of content at a control apparatus occurs after the content has been stored and uniquely identified. Examiner's Answer, page 6. The Appellant has asserted in the Appeal Brief that the Appellee has not shown that Fishman teaches these limitations of claim 43.

In response, the Appellee now relies on Fenton, Fig. 1 for teaching this limitation. The Appellee specifically points to MMSE 114 as teaching the gateway as claimed. But the Appellee has not shown that Fenton teaches that MMSE 114 is for receiving a unique identification of certain content of the stored content and for sending at least a portion of said uniquely identified content to a recipient identified by the user. Instead, the Appellee asserts that "Fenton clearly requires the content to be stored before being delivered (non-real time transfer) . . ." Here, the Appellee has asserted that Fenton teaches a portion of the claim limitation and has not explained how Fenton teaches the other aspects of the claimed limitation. For example, the Appellee asserts that Fenton teaches storing and delivery of content by MMSE 114. However, the Appellee has not shown MMSE 114 is apparatus for receiving a unique identification of certain content of the stored content and for sending at least a portion of said uniquely identified content to a recipient identified by the user. In sum, the Appellee has not shown that Fenton in view of Fishman teaches all the limitations of claim 43. Accordingly, the Appellant respectfully requests that the Board reverse the rejection, under 35 U.S.C. § 103(a), of claim 43.

3. Dependent claim 44

Dependent claim 44 depends from independent claim 43 and thus inherits all the limitations of claim 43. It is respectfully submitted that dependent claim 44 is allowable at least because of its dependence from claim 43 for the reasons discussed above. Accordingly, the Appellant respectfully requests that the Board reverse the rejection, under 35 U.S.C. § 103(a), of claim 43.

B. Second Ground of Rejection – 35 U.S.C. § 103(a) Rejections over Fenton and Fishman in view of Kontio

Claims 33 – 42 and 45 – 50 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fenton and Fishman in view of U.S. Patent Publication No. 2004/0249768 to Kontio et al. (hereinafter, “Kontio”). In the Appeal Brief, the Appellant argued some of claims 33 – 42 and 45 – 50 separately. As such, claims 33 – 42 and 45 – 50 should not be construed to stand or fall together, though the separate arguments have not been repeated in this Reply Brief.

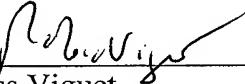
Dependent claims 33 – 42 and 45 – 50 depend either directly or indirectly from independent claims 32 and 43 and thus inherit all the limitations of their respective independent claims. As discussed above, Fenton in view of Fishman does not teach all the limitations of claims 32 and 43. As discussed in the Appeal Brief, Kontio is insufficient to cure Fenton’s and Fishman’s failure to teach the limitations of claims 32 and 43. In sum, the Appellee has not shown that Fenton in view of Fishman and further in view of Kontio teach all the limitations of claims 33 – 42 and 45 – 50. Accordingly, the Appellant respectfully requests that the Board reverse the rejection, under 35 U.S.C. § 103(a), of claims 33 – 42 and 45 – 50.

IV. CONCLUSION

Further to the discussion above and Appellant’s discussion in the Appeal Brief, Appellant submits that claims 32 – 50 are patentable over the applied references. Therefore, Appellant respectfully requests that the Board overturn the rejections of pending claims 32 – 50.

Dated: September 24, 2010

Respectfully submitted,

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